

# SUBJECT INDEX.

---

	Pages
Petition for Writ of Certiorari.....	1
Caption .....	1-2
I.    Judgment Below .....	2
II.   Summary Statement of The Matter Involved....	2-3
III.  Statement of The Basis of The Jurisdiction of This Court.....	3
IV.  The Questions Presented.....	3-4
V.   Reasons Relied Upon for Allowance of The Writ of Certiorari.....	4-5
Brief In Support of Petition For Writ of Certiorari.....	6
I.    Opinion Below .....	6
II.   Jurisdiction .....	6
III.  Grounds Upon Which The Jurisdiction Of This Court is Invoked.....	7
IV.  Statement of The Case.....	7-9
V.   Specification of Errors.....	9-10
VI.  Argument .....	10-25
(1)  The Evidence .....	13-17
(2)  Appraisal Reports Have No Place In The Hearing.....	17-21
(3)  Error Not Cured on Review.....	21-25
Conclusion .....	25

ii.

TABLE OF CASES CITED.

	Pages
Carter vs. Kubler, 320 U. S. 243.....	5, 7, 12, 17, 19, 22, 23
Moser vs. Mortgage Guarantee Company, (9th Cir.), 123 F. (2d) 423.....	5, 7, 17, 22
Rhodes vs. Federal Land Bank of St. Paul, (8th Cir.), 140 F. (2d) 612.....	4, 7, 18
Wright vs. Union Central Life Ins. Company, 311 U. S. 273.....	12

---

STATUTES CITED.

Judicial Code, Section 240 (a) .....	3
Section 75, S(3), Bankruptcy Act.....	2, 23

# Supreme Court of the United States

OCTOBER TERM, 1945.

---

**No.** \_\_\_\_\_

---

TONY GRANIERI, BANKRUPT,  
PETITIONER,

versus

TONY BLANCHE SCHRAMM, CREDITOR,  
RESPONDENT.

---

## **Petition for Writ of Certiorari**

TO THE UNITED STATES CIRCUIT COURT OF  
APPEALS, FIFTH CIRCUIT.

---

TO THE HONORABLE HARLAN FISKE STONE, CHIEF  
JUSTICE, AND THE ASSOCIATE JUSTICES OF  
THE SUPREME COURT OF THE UNITED  
STATES:

The petitioner, Tony Granieri, respectfully prays this  
Honorable Court for a writ of certiorari to the United States  
Circuit Court of Appeals for the Fifth Circuit, for the  
reasons hereinafter set out.

The brief in support of this petition begins at page 6.

All emphasis in this petition and brief is supplied, except where it is stated otherwise.

I.

JUDGMENT BELOW.

The judgment sought to be reviewed was entered June 15, 1945, and appears at page 84 of the Record.

II.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Petitioner is a farmer-debtor, who was adjudged a Bankrupt under Section 75, Sub-section s, of the Bankruptcy Act, 11 U. S. C. A., Section 203, sub-section s. The question presented arises out of the redemption provisions of the farmer-debtor law, Section 75, sub-section s(3) of the Bankruptcy Act, 11 U. S. C. A., Section 203, Sub-section s (3). The applicable part of this latter section provides that " \* \* \* the debtor may pay into court the amount of the appraisal of the property \* \* \* Provided, That upon request \* \* \* the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court \* \* \* and thereupon the court shall, by an order turn over full possession and title of said property \* \* \* to the debtor".

The respondent filed with the conciliation commissioner a request for a reappraisal hearing to fix the value of the farm for redemption purposes. A hearing was had, and the commissioner entered an order which recited that based on "the evidence on value and other pertinent matters" he

valued the farm in question in the sum of \$29,950. On petition to review, the District Court summarily affirmed and adopted without change the commissioner's finding of a \$29,950 value.

The opinion of the Circuit Court appears at R. 84.<sup>3</sup>

### III.

#### STATEMENT OF THE BASIS OF THE JURISDICTION OF THIS COURT.

The jurisdiction of this court is conferred by Section 240(a) of the Judicial Code, 28 U. S. C. A. 347(a).

The petitioner has complied with Section 8(a) of the Act of February 13, 1925, 28 U. S. C. A. 350. The final judgment of the court below was rendered on June 15, 1945, and this petition is filed within three months thereafter.

### IV.

#### THE QUESTIONS PRESENTED.

Briefly stated, the questions presented are:

(1). In fixing the valuation at which a farmer-debtor shall redeem his farm, does the statutory provision in Section 75, sub-section s(3) that the court shall "set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted", permit the conciliation commissioner to fix such valuation by considering as substantive evidence, over objection, the original appraisal reports filed more than two years prior to the reappraisal hearing? (R. 38-41).

(2). In fixing the valuation at which a farmer-debtor shall redeem his farm, does the statutory provision in Section 75, sub-section s(3) that the court shall "set a date for hearing, and after such hearing, fix the value of the prop-

erty, in accordance with the evidence submitted", permit the conciliation commissioner to fix such valuation based on "the evidence of value and other pertinent matters"? (R. 3-4).

(3). May the District Court, on petition for review of the conciliation commissioner's order fixing redemption value of the farm under section 75 s(3), summarily affirm and adopt without change the commissioner's finding of a \$29,950 value, when the commissioner, in fixing such value, took into consideration as substantive evidence, in addition to "the evidence on value", "other pertinent matters", which said "other pertinent matters" included the appraisal reports filed with the commissioner more than two years prior to the valuation hearing.

## V.

### REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT OF CERTIORARI.

(1). There is involved a question of importance in the interpretation and administration of a federal statute, Section 75 s(3) of the Bankruptcy Act, which relates to the method of redemption by a farmer debtor of his farm from secured debts.

(2). The decision of the Circuit Court of Appeals in the instant case holding that "The fact that the Commissioner and the Court below considered other evidence appearing in the record in the bankruptcy case on the question of value does not require a reversal", is in conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in the case of *Rhodes vs. Federal Land Bank of St. Paul*, 140 F. (2) 612, Cert. Den. 64 S. Ct. 1143.

(3). The decision of the Circuit Court of Appeals in the instant case is in conflict with the decision of the Circuit

Court of Appeals for the Ninth Circuit in the case of *Moser vs. Mortgage Guarantee Co.*, 123 F. (2d) 423.

(4). The decision of the Circuit Court of Appeals in the instant case is in conflict with the decision of this Court in the case of *Carter vs. Kubler*, 320 U. S. 243, 64 S. Ct. 1.

WHEREFORE, your petitioner prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Fifth Circuit, directing the said court to certify and send to the Supreme Court of the United States for its review and determination a full and complete transcript of the Record and proceedings in the said Circuit Court; that the said decree of the Circuit Court be reversed and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

NAT L. HARDY,  
San Antonio 5, Texas,  
*Attorney for Petitioner.*

ELMER WARE STAHL,  
A. R. SOHN,  
San Antonio 5, Texas,  
*Of Counsel.*

# Supreme Court of the United States

OCTOBER TERM, 1945.

---

No.....

---

TONY GRANIERI, BANKRUPT,  
PETITIONER,

versus

TONY BLANCHE SCHRAMM, CREDITOR,  
RESPONDENT.

---

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

---

### I.

#### OPINION BELOW.

The opinion of the Circuit Court of Appeals (Circuit Judges Samuel H. Sibley, Joseph C. Hutcheson, and Curtis L. Waller, Judge Curtis L. Waller writing the opinion of the court) was filed June 15, 1945, and appears at page 87 of the record.

### II.

#### JURISDICTION.

The jurisdiction of this court is invoked under Judicial Code 240, as amended by Act of February 13, 1925, 43 Statutes 938—U. S. C. A. Title 28, Section 347 (a).



### III.

#### GROUND S UPON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The grounds relied upon for invoking the jurisdiction of this court have been set forth at pages 4 and 5 of the preceding petition. To recapitulate, they are: That an important question of the interpretation and administration of a federal statute is involved, namely Section 75 s(3) of the Bankruptcy Act, which prescribes the procedure whereby a farmer-debtor may redeem his farm from liens against it; that the decision of the Circuit Court below is in conflict with said statute and with the following federal decisions:

(a). The Circuit Court of Appeals for the Eighth Circuit in the case of *Rhodes vs. Federal Land Bank of St. Paul*, 140 F. (2d) 612, Cert. Den. 64 S. Ct. 1143.

(b). The Circuit Court of Appeals for the Ninth Circuit in the case of *Moser vs. Mortgage Guarantee Co.*, 123 F. (2d) 423.

(c). The Supreme Court of the United States in the case of *Carter vs. Kubler*, 320 U. S. 243, 64 S. Ct. 1.

The judgment sought to be reviewed herein was rendered on June 15, 1945.

### IV.

#### STATEMENT OF THE CASE.

Tony Granieri, petitioner herein, is a farmer-debtor, who was adjudged a Bankrupt in 1941, under Section 75, Sub-section s, of the Bankruptcy Act. He is the owner of a 172½ acre farm in Bexar County, Texas. Tony Blanche Schramm, respondent herein, holds a mortgage on this farm, and is the sole remaining secured creditor of the

debtor. On June 19, 1941, an order was entered continuing the farmer-debtor in possession of the farm for a period of three years, pursuant to the terms of Section 75 (s) of the Bankruptcy Act. On June 24, 1944, after the expiration of the three year period, the respondent filed with the conciliation commissioner a request for a reappraisal hearing to fix the value of the farm for redemption purpose. (R. 1-3, 72).

A hearing was held by the conciliation commissioner, and the evidence adduced therein appears in question and answer form at pages 15 to 80 of the Record. At the hearing respondent offered in evidence, over the objection of petitioner, (R. 39, 40), the original sworn appraisal report made in 1942, (R. 38, 74), stating that it was offered "*as a very accurate basis for the determination of the reasonable market value*", (R. 39). The commissioner permitted the respondent "*to introduce it (appraisal report) as evidence*", (R. 41).

On August 3, 1944, the commissioner entered an order reciting, "*the evidence on value and other pertinent matters having been heard at length*", "*the present reasonable market value of the said farm is the sum \$29,950*". (R. 3-4). On petition of petitioner to review the order of the commissioner, (R. 4-7), the District Court summarily affirmed and adopted without change the commissioner's finding of a \$29,950 value, said order of the District Court stating that it was based upon "*the Transcript of the testimony taken at the hearing before the said Referee (commissioner) and the Briefs of counsel*". (R. 8).

Thereafter an appeal was duly taken to the Circuit Court of Appeals, for the Fifth Circuit, (R. 83). The Circuit Court of Appeals affirmed the order of the District Court, and held there was competent evidence to support the value finding and "*The fact that the Commissioner and*

*the Court below considered other evidence appearing in the record in the bankruptcy case on the question of value does not require a reversal.” (R. 84).*

V.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred in affirming the judgment of the District Court:

(1). Where the conciliation commissioner fixed the value of the property by taking into consideration “other pertinent matters” in addition to “the evidence on value,” which “other pertinent matters” included the appraiser’s report filed with the commissioner more than two years prior to the reappraisal hearing.

(2). Where the conciliation commissioner attempted to sustain the appraisal reports made and filed more than two years prior to the reappraisal hearing, for the reason that the purpose of the hearing under sub-section s(3) of Section 203, Title 11 U. S. C. A., is to fix the value of the property in accordance with the evidence submitted, without regard to the amount of the original appraisals as such, but by a proper adherence to judicial standards.

(3). Where the conciliation commissioner held a hearing pursuant to Title 11, Section 203, sub-section s(3) for the purpose of fixing the value of the property, in accordance with the evidence submitted, and, over objection, permitted the introduction of, and took into consideration, the original appraisal, for the reason that for the purpose of reaching a value-result, the contents of the appraisal report has no place in the hearing and should not be considered as substantive evidence or “pertinent matter” or a factor in the commissioner’s decision.

(4). Where the District Court summarily affirmed and adopted without change the commissioner's finding of a \$29,950 value, when the commissioner, in fixing such value, took into consideration "other pertinent matters" in addition to "the evidence on value," which said "other pertinent matters" included the appraiser's reports filed with the commissioner more than two years prior to the valuation hearing.

(5). Where the District Court failed to either modify the commissioner's valuation, or set aside the commissioner's order and receive further evidence or recommit the matter to the commissioner with instructions, for the reason that since the commissioner erred in receiving incompetent evidence, the District Court should have found that the commissioner's misconception of what constituted competent evidence of value influenced his determination in fixing a value of \$29,950 on the farm in question.

(6). The Circuit Court of Appeals erred in holding that "The fact that the commissioner and the Court below considered other evidence appearing in the record in the bankruptcy case on the question of value does not require a reversal."

## VI.

### ARGUMENT.

#### SUMMARY OF THE ARGUMENT.

The questions presented concern the very foundation of the farmer debtor law. The redemption provisions of Section 75 are the culmination of the Act. Every other provision of the Act is subsidiary to it. The object of the value-hearing provided for in sub-section s(3) of the statute is not to test or to attempt to sustain the appraisal report. The purpose of the hearing is to fix the value of the prop-

erty in accordance with the proper evidence submitted, without regard to the amount of the original appraisal as such, but by a proper adherence to judicial standards. The statute confers no authority on either the judge or the commissioner to consider "other pertinent matters" or the original appraisal reports in fixing the value of the farm for redemption. The farmer-debtor is entitled to a valuation based on a strict adherence to orderly procedure. For purposes of reaching a value-result, the contents of the appraisal report has no place in the hearing as a matter of substantive evidence. For the commissioner to undertake to use it as a factor in his decision is to fuse an improper element into the processes of the hearing and into the result reached.

The proceedings and order of the conciliation commissioner were clearly erroneous and the error was not cured on review in the District Court, since the District Court merely re-examined the same evidence and the same appraisal report introduced at the hearing before the commissioner, and refused to modify the latter's valuation, but on the contrary summarily affirmed and adopted without change the commissioner's finding of \$29,950 value. The very improper evidence which was before the commissioner was likewise before the District Court. And an examination of the evidence hereinafter set forth demonstrates that all of respondent's testimony was grounded on, and tied to, the original appraisal reports, and, that it was her contention that that value of the farm was the amount of the original appraisal plus a 10% to 25% increase in the value of lands generally since the dates of said original appraisals. The record further reflects that it was the purpose of respondent to sustain the original appraisal reports, and that the commissioner sustained that position and contention as reflected in his value finding of \$29,950.

The commissioner having denied the petitioner the full and fair hearing guaranteed to him by Congress, the District Court should have found that the commissioner's misconception of what constituted substantive evidence of value influenced the commissioner's determination in fixing a value of \$29,950, and should have either modified the commissioner's valuation, or set aside the order and receive further evidence or recommit the matter to the conciliation commissioner with instructions. The action of the District Court in summarily affirming and adopting without change the order of the commissioner did not cure the error of the commissioner, *since the evidence would have supported a value finding ranging from \$20,912 to \$33,500, and it is impossible to determine what influence the improper evidence may have had upon the conclusion reached by the commissioner.*

The Circuit Court of Appeals in holding that "The fact that the commissioner and the court below considered other evidence appearing in the record in the bankruptcy case on the question of value does not require a reversal", has totally misconstrued the character of hearing that a farmer debtor is entitled to by virtue of that portion of Section 75 s(3) which provides that "the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property in accordance with the evidence submitted."

The purpose of the farmer-debtor law is to try to keep the owner debtor in permanent possession of the mortgaged property. This was intended to be accomplished by paying to the mortgagee the value of the security instead of permitting him to take the security itself. As this court has declared, "There is no constitutional claim of the creditor to more than that". *Wright vs. Union Central Life Ins. Co.*, 311 U. S. 273, 278, 61 S. Ct. 196. And, as stated by this court in *Carter vs. Kubler*, 320 U. S. 243, 64 S. Ct. 1, "If the

District Court conducts a hearing to determine the value of the property or if the conciliation commissioner is authorized to hold such a hearing, the statute provides that the valuation shall be fixed 'in accordance with the evidence submitted' at the hearing." In the same case, this court further held that once a hearing has been ordered, section 75, Sub. s(3), necessarily guarantees that it shall be a fair and full hearing, based upon a strict adherence to judicial standards. It is apparent that if the legal machinery for the redemption of the property provided by the Congress is misused, the purpose of the statute is defeated and all the antecedent procedure has been in vain.

Petitioner submits that the record demonstrates that the hearing to fix the value of the property in accordance with the evidence submitted was not conducted by a proper adherence to judicial standards, and failed to observe orderly procedure in the administration of the redemption provisions in Section 75 (s).

#### (1) THE EVIDENCE.

*Fred Reutzel*, a witness on behalf of respondent, (R. 33), testified that in March or April, 1942, he had appraised the property in question at the request of the commissioner, and had fixed its value at that time at \$25,830; that since said time the value of lands, generally, had increased from 10% to 25% (R. 34). That as of the date of the hearing on July 26, 1944, (R. 15), he did not know how many acres of irrigable land there were on the farm, nor how many acres were known as dry land nor how many acres were bottom land, (R. 36), and that his opinion as to the value of the land now being approximately \$28,000.00, (R. 35), relates back to the day he inspected the land (R. 37) in April, 1942, (R. 34), and is based on the condition of the land in April, 1942, (R. 37). That he does not know of his

own knowledge what the condition of the farm is today, (R. 37); that at the time he made the appraisal in 1942, he was accompanied by Mr. Alfred Rhode, (R. 38).

At this juncture, respondent offered in evidence the written, sworn appraisal made in 1942, by Mr. Reutzel and Mr. Rhode, (R. 38). The record reflects that the following proceedings thereupon took place:

"MR. STAHL: We object to that on the ground that *the purpose of this proceeding is to fix the reasonable market value as of now, and the law contemplates that the reasonable market value may have changed, and the appraisal made several years ago has no bearing on the situation as of to-day; it is extraneous, foreign, irrelevant and immaterial, and we object to its introduction for that reason.*

"MR. TRUEHEART: In the light of the testimony of this gentleman, the value, instead of decreasing, has increased about 10% since that time. *I offer it as a very accurate basis for the determination of the reasonable market value in connection with this 10% increase the witness has mentioned.*" (R. 39).

\* \* \* \* \*

"MR. STAHL: \* \* \* That statement is the wildest sort of speculation and conjecture. I am objecting to the admissibility of *that document as constituting no evidence whatsoever as to the value today, even though he said that land generally had increased 10% to 25%. That is my objection and we except to any action that would admit that document.*

"THE REFEREE: I will permit him to introduce it *as evidence.*

"MR. STAHL: Note our exception. (The instrument in question was thereupon received in evidence by the Court, and marked for identification as Creditor's Exhibit A. For Copy of this instrument refer to Index)." (R. 40-41).



Creditor's Exhibit A was signed and sworn to by Fred Reutzell and Alfred W. Rhode on April 2, 1942, and reflects that they appraised the farm and improvements at \$25,800, (R. 73-78).

The witness further testified that the figures stated in his appraisal (Creditor's Exhibit A) are true and correct as of the time he arrived at them in 1942, and that since that time the value of the farm increased 10% to 25%. (R. 42).

*Alfred W. Rhode*, also an appraiser appointed by the commissioner in 1942, (R. 64), testified that he made a sworn appraisal, and that the instrument marked Creditor's Exhibit A bears his signature; that the property was worth \$25,800 in 1942. (R. 64-65).

The witness further testified that since the time of the above appraisal (Creditor's Exhibit A), the land has increased in value, (R. 65), and that the land is now worth \$24,800.00 exclusive of the improvements, (R. 66); that he drove by the farm on the day of this hearing, (R. 68), but did not get out of his automobile, and that his testimony as to the quantity of irrigable land and dry land as of to-day is based on this inspection, (R. 69), and that the purpose of the last inspection was to satisfy himself that the place was like it was 2½ years ago. (R. 70).

*J. C. Rice* called as a witness by respondent, testified that in 1941 he had also made a written appraisal of the 172 acre farm, and that his notes disclose that as of November, 1941, the reasonable market value of the land was \$27,100.00 exclusive of the improvements, (R. 43-44); that the improvements are worth about \$5,000, (R. 46); that before he testified in this hearing he was furnished with the appraisal report of 1942, (R. 55); that since 1942 the farm has increased 25% in value, (R. 44-45).

That he also made an inspection of the property on the day of this hearing by merely driving down to the farm and back, and did not get out of his automobile, (R. 49), and that he doesn't know how many acres are irrigable as of to-day, (R. 51), but is assuming that there are 100 acres that are irrigable based on what somebody told him in 1941, (R. 50). That he has not walked over the land and verified the amount of irrigable and cultivable land as of now, (R. 61). That he did not go into the Granieri home or farm buildings on his inspection made on the day of this hearing, (R. 62). That the value of the land and improvements to-day is \$31,144.00. (R. 46).

*William F. Schutz*, testified, on behalf of respondent, that he also examined the farm in November, 1941; that he then valued it at \$25,000.00, and that since that time there has been an increase in values and the farm is now worth \$28,500.00, (R. 17), exclusive of the improvements, (R. 18).

He further testified that he had not been on the land since November, 1941, that he is not acquainted with the improvements and their condition as of the time of this hearing, and doesn't know whether the condition of the improvements has changed since November, 1941, (R. 18, 26); that he is not in a position to tell what the reasonable market value of the land and improvements is, (R. 19); that he couldn't draw a rough sketch of the farm and its shape, (R. 19); that he considered the farm had 92 acres of irrigable land because he was so told by the creditor's attorney in 1941, (R. 26, 29), when he got into the case, (R. 27, 30).

The evidence as to value at this hearing was as low as \$20,912. (R. 80).

On August 3, 1944, the commissioner entered an order which recited that based on "the evidence on value and other

pertinent matters", he valued the property in the sum of \$29,950. (R. 5).

Petitioner filed a Petition For Review complaining of the action of the commissioner in so fixing the value, and prayed that the order be set aside and held for naught and that the District Court direct the commissioner to set a new date for a hearing and after such hearing fix the value of the property in accordance with the legal and competent evidence submitted, (R. 4-7).

The District Court summarily affirmed and adopted without change the order of the commissioner, by order which recited that "said petition having been considered in connection with the order complained of, *the Transcript of the testimony taken at the hearing before the said Referee*, and the Briefs of counsel, and it appearing to the Court, upon a consideration of this record, that the said order of the Referee fixing the value of the farm involved in the sum of \$29,950.00 should be approved and affirmed." (R. 9).

## (2) APPRAISAL REPORTS HAVE NO PLACE IN THE HEARING.

That it is "clearly erroneous" for the commissioner to fix a value of the farmer-debtor's property for redemption purposes under Section 75, Sub-section s(3) of the Bankruptcy Act by taking into consideration matter not introduced at the hearing according to judicial standards, has been adjudicated in the following cases:

Carter vs. Kubler, 320 U. S. 243, 64 S. Ct. 1;

Moser vs. Mortgage Guarantee Co., 123 F. (2d) 423.

It has also been held that it is "clearly erroneous" for the commissioner to fix a value of the farmer-debtor's property for redemption purposes under Section 75, Sub-

section s(3) of the Bankruptcy Act, based upon prior appraisal reports.

In *Rhodes vs. Federal Land Bank of St. Paul*, 140 F. (2d) 612, Cert. Den., 64 S. Ct. 1143, the conciliation commissioner made a finding as to the value of the property for redemption purposes, and in reaching his decision considered the original appraisal report. Upon review by the District Court the redemption value of the land was *increased*. Upon appeal by the creditor, the Circuit Court held that the proceedings and order of the commissioner were "clearly erroneous", and that the district court was therefore authorized to disregard the value finding of the commissioner, stating:

"We have pointed out, in *Rait vs. Federal Land Bank of St. Paul*, 8 Cir., 135 F. 2d 447, 451, that *the object of the value-hearing provided for in subsection s(3) of the statute is not to test or to attempt to sustain the appraisal report. The purpose of the hearing, as we said in the Rait case, is 'to fix the value of the property, in accordance with the evidence submitted', without regard to the amount of the original appraisal as such, but by a proper adherence to judicial standards. For purposes of reaching a value-result, the contents of the appraisal report ordinarily will have no place in the hearing as a matter of substantive evidence, and certainly none whatever by way of judicial notice. For the conciliation commissioner to undertake to use it, by judicial notice, as a factor in his decision, is to fuse an improper element into the processes of the hearing and into the result reached.*"

The Circuit Court affirmed *Rhodes vs. Federal Land Bank of St. Paul*, *supra*, for the reason that the District Court had *disregarded* the value finding of the commissioner and had made an independent value finding based

on other evidence in the record. Had the District Court done no more than summarily affirm and adopt without change the commissioner's finding as to value, the defect upon which that finding rested would not have been cured, and petitioner would have been deprived of the fair hearing to which he was entitled. *Carter vs. Kubler*, 64 S. Ct. 1, 4, 320 U. S. 243, 248.

Petitioner submits that the record in the case at bar discloses that the proceedings and order of the conciliation commissioner were "clearly erroneous," and that the District Court did not, and could not, make a determination of the value of the land for redemption purposes on a proper legal basis. The record discloses that the appraisal report of 1942 was offered in evidence over the objection; that it was offered "as a very accurate basis for the determination of the reasonable market value," and that the Commissioner ruled "I will permit him to introduce it as evidence." The record further reflects that all of respondent's testimony was grounded on, and tied to, the original appraisal reports, and, that it was her contention that since said original appraisals, the value of lands generally had increased 10% to 25%. The record further reflects that every one of respondent's witnesses had made appraisal reports on the farm in question in 1941 and 1942, and that the testimony of every one of said witnesses was to the effect that their appraisal at said earlier dates was true and correct, and that the value of the farm today was the value they placed on the farm in 1941 and 1942 plus an increase of from 10% to 25%. The record further reflects that none of the witnesses made any character of competent investigation or inspection of the farm and its improvements since their appraisals of 1941 and 1942, to determine its true market value as of 1944, but that two of them never visited the property after the original appraisal, and two of them

merely drove by on the day of the value hearing in 1944, and did not even get out of their automobiles. In short, this entire record discloses that it was the purpose of respondent on the value hearing in 1944, to sustain the appraisal reports of 1941 and 1942; and the record further discloses that the commissioner sustained that position and contention. This was held to be "clearly erroneous" in *Rhodes vs. Federal Land Bank of St. Paul*, supra. That this evidence and contention is reflected in the value finding of the commissioner is patently plain. The record discloses that the appraisal report of 1942 fixed the value of the farm at \$25,800. All of the appraisers testified at the value hearing that the property had increased in value from 10% to 25% since 1942; the commissioner set a value of \$29,950 on the farm—the commissioner had in fact accepted the appraisal reports of 1941 and 1942, and had taken a part of the percentage increase of 10% to 25% and added it to the appraisal values of 1941 and 1942, to reach a value of \$29,950.00 as of 1944.

If the testimony of the witnesses with reference to their appraisal reports of 1941 and 1942, is disregarded, the remaining testimony lacks probative force and is not legally competent to establish the reasonable market value of the land and improvements at the time of the hearing in July, 1944. None of the witnesses knew how many acres of the farm were dry land or how many acres were bottom land or how many acres were irrigable land. Neither did a single witness know of, or testify about, the present condition of the land or the present condition of the improvements, or the other factors which form the basis for determining market value.

Petitioner concedes that the conciliation commissioner in a case such as this is the trier of the issue of value and is acting as a Referee, and that his findings of fact must be

accepted upon review unless clearly erroneous. The finding of the commissioner is clearly erroneous if it is based upon a substantial error in the proceedings or upon a misapplication of the controlling law. It is the duty of the commissioner to try the issue of value upon lawful evidence, and it is the function of the district judge in reviewing the determination of the commissioner to ascertain whether any incompetent evidence was received and relied upon and whether a fair hearing was accorded. It is further clear that on review, the District Judge is not authorized to literally accept as substantial the testimony of expert witnesses which is obviously based upon pure speculation. Where the commissioner has not competently tried and competently determined the issue of value, *it is the duty of the District Judge to either modify the commissioner's valuation, or set aside the order and receive further evidence or recommit the matter to the conciliation commissioner with instructions.* Since in this case the commissioner erred in receiving incompetent evidence, *the District Judge should have found that the commissioner's misconception of what constituted competent evidence of value influenced his determination in fixing a value of \$29,950 on the farm in question.*

For a discussion of the foregoing principles, see *Kauk vs. Anderson*, 137 F. (2d) 331.

### (3) ERROR NOT CURED ON REVIEW.

The fact that the District Court affirmed the order of the commissioner did not cure the error of the conciliation commissioner in fixing the value of the property based upon "evidence on value and other pertinent matters," and the appraisals of 1941 and 1942, for the reason that the commissioner's order was not modified by the District Court, and only the same improper evidence was before the District Court.



In *Moser vs. Mortgage Guarantee Co.*, 123 F. (2d) 423, the conciliation commissioner, at a value hearing, fixed the value of the debtor's farm "on the evidence adduced at the hearing and from personal knowledge of land values in the vicinity of this property." On Petition For Review, the District Court had before it the transcript of such hearing, and, without receiving further evidence, approved and confirmed the commissioner's conclusion as to the value of the farm. No evidence taken or considered outside the hearing was included in the transcript of the hearing presented to the District Court on Review.

The Circuit Court of Appeals held that the action of the commissioner was error, and that even though the evidence actually taken at the hearing and reported in the transcript certified to the District Court would support the commissioner's finding as to value, *this error was not cured by the affirmance of the order by the District Court*, for the reason that the evidence would have supported different amounts as to value, ranging from \$9,000.00 to \$12,000.00, and it is impossible to determine what influence the improper evidence may have had upon the conclusion reached by the commissioner.

*Moser vs. Mortgage Guarantee Co.*, supra, was cited and approved by the Supreme Court in *Carter vs. Kubler*, 320 U. S. 243, 64 S. Ct. 1.

So, in the case at bar. The evidence as to value at the hearing before the commissioner ranged from \$20,912, (R. 80), to \$33,500; the evidence would have supported different amounts as to value, and it is impossible to determine what influence the improper evidence may have had upon the conclusion reached by the commissioner.

The legal significance of the failure of the District Court to modify the order of the commissioner, where the action of the commissioner is "clearly erroneous," is dis-



cussed in *Carter vs. Kubler*, 320 U. S. 243, 64 S. Ct. 1. In this case, the conciliation commissioner, at a valuation hearing, fixed the value of the land in question at \$25,000.00, based upon the evidence adduced at the hearing and upon a personal investigation. The debtor-farmer filed a Petition For Review, and the District Court, after reviewing the entire testimony introduced at the value hearing before the commissioner, concluded that the commissioner's estimate was too high and reduced the valuation to \$20,000.00. It did not appear that the District Court made any use, or mention, of the commissioner's personal investigation in arriving at this valuation, or that any evidence was considered by the District Court other than that properly introduced at the hearing before the commissioner.

This Court held "that the conciliation commissioner erred in fixing the value of the property partly upon his personal investigation, but that, under the circumstances of this case, such error was cured inasmuch as the District Court re-examined all the evidence properly introduced at the hearing before the commissioner and thereupon *modified* the latter's valuation."

But the Court also pointed out that the valuation must be determined solely from the evidence adduced at the hearing, and the use of evidence obtained in any other manner is improper; that a hearing under Section 75, Sub-section s (3) must be "a fair and full hearing," based upon a strict adherence to judicial standards; and that:

"The irregularity of the commissioner's personal investigation, however, appears to have been cured by the District Court's review and *modification* of the commissioner's valuation \* \* \*.

"*Had the District Court done no more than summarily affirm and adopt without change the commissioner's finding of a \$25,000 value, the defect upon which that finding rested would not have been cured*

and petitioner would have been deprived of the fair hearing to which he was entitled. Moser vs. Mortgage Guarantee Co., supra. But here the commissioner's error was brought to the judge's attention by petitioner and we cannot assume that the judge was unmindful of this objection. The District Court disregarded the commissioner's \$25,000 valuation, heard argument by counsel, made an independent and complete review of the conflicting evidence introduced at the hearing before the commissioner, and fixed the valuation at \$20,000 'under the evidence before me.' All of this was authorized by Order 47 inasmuch as the commissioner's personal investigation made his finding as to value 'clearly erroneous.'

"It is thus apparent that the error of which petitioner complains was cured by the District Court. Since none of the evidence procured by the commissioner through his personal investigation was included in the record certified to the judge, it cannot be said that the judge's \$20,000 valuation was in any way grounded on such improper evidence. Petitioner had full opportunity to examine and rebut all the evidence utilized by the judge in fixing this valuation.

"This procedure, furthermore, gave petitioner the full and fair hearing guaranteed to him by Congress. If the conciliation commissioner is properly authorized to conduct a reappraisal hearing and commits an error *which can be and is corrected by the District Court on appeal*, the hearing contemplated by Section 75, sub-section s(3) has been had."

Petitioner submits that the record before the Court affirmatively discloses that the hearing before the commissioner was not a "fair" hearing, and was not based upon a strict adherence to judicial standards; that the action of the commissioner was "clearly erroneous," and that the action of the District Court in summarily affirming and adopting

without change the commissioner's finding of \$29,950 value did not cure the defect upon which that finding rested, and for that reason Petitioner has been deprived of the fair hearing to which he was entitled.

### CONCLUSION.

The order of the district court, affirmed by the Circuit Court of Appeals, is in conflict with well-considered decisions in other circuits and with decisions of this court. The result of the decisions of the conciliation commissioner, of the District Court, and of the Circuit Court of Appeals is to defeat the purpose of Section 75 of the Bankruptcy Act as interpreted by the decisions of this court.

The orders below should be reversed so that the farmer-debtor may have a judicial determination of the valuation of his farm under the redemption provisions of the farmer debtor law.

WHEREFORE, your petitioner prays that a writ of certiorari may issue to the United States Circuit Court of Appeals for the Fifth Circuit.

---

NAT L. HARDY,  
San Antonio 5, Texas,  
*Attorney for Petitioner.*

ELMER WARE STAHL,  
A. R. SOHN,  
San Antonio 5, Texas,  
*Of Counsel.*

the first of the two main branches of the river  
the first of the two main branches of the river  
the first of the two main branches of the river  
the first of the two main branches of the river

the first of the two main branches of the river  
the first of the two main branches of the river  
the first of the two main branches of the river  
the first of the two main branches of the river

the first of the two main branches of the river  
the first of the two main branches of the river  
the first of the two main branches of the river  
the first of the two main branches of the river

the first of the two main branches of the river  
the first of the two main branches of the river  
the first of the two main branches of the river  
the first of the two main branches of the river

the first of the two main branches of the river  
the first of the two main branches of the river  
the first of the two main branches of the river  
the first of the two main branches of the river

SEP 25 1945

CHARLES ELMORE DROPLEY  
CLERK

---

---

# Supreme Court of the United States

OCTOBER TERM, 1945.

---

**No. 401**

---

TONY GRANIERI, BANKRUPT,  
PETITIONER,

versus

TONY BLANCHE SCHRAMM, CREDITOR,  
RESPONDENT.

---

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

---

L. G. SEELIGSON,  
National Bank of Commerce Building,  
San Antonio 5, Texas,  
*Attorney for Respondent,*  
*Tony Blanche Schramm.*

*Of Counsel:*

TRUEHEART, McMILLAN & RUSSELL,  
713 National Bank of Commerce Bldg.,  
San Antonio 5, Texas.



## SUBJECT INDEX.

---

	Pages
Statement of the Case and the Question Presented.....	1-3
The Opinion of the Court Below.....	3
Argument .....	3-6
The Evidence .....	3
Petitioner's Authorities .....	4-5
Admission of Report not "Clearly Erroneous".....	5-6

---

## LIST OF AUTHORITIES.

	Pages
Brockton Savings Bank vs. Shapiro, 42 N. E. (2d) 828 (Mass.).....	5
Equitable Life Assurance Society vs. Carmody, 131 F. (2d) 318, (C. C. A. 8th).....	5
Equitable Life Assurance Society vs. Deutschele, 132 F. (2d) 525, (C. C. A. 8th).....	5
Love vs. United States, 141 F. (2d) 981, (C. C. A. 8th.....	6
Oakland Waterfront Co. vs. Leroy, 282 F. 385, (C. C. A. 9th).....	6
Rait vs. Federal Land Bank, 135 F. (2d) 447.....	5
Silberman vs. Monroe, 62 N. W. 555 (Mich.).....	5
Town of Ripton vs. Town of Brandon, 67 Atl. 541 (Vt.)....	5
United States vs. Savannah Shipards, 139 F. (2d) 953, 140 F. (2d) 863, (C. C. A. 5th).....	6
United States vs. Becktold Co., 129 F. (2d) 473, 479, (C. C. A. 8th).....	6





# **Supreme Court of the United States**

**OCTOBER TERM, 1945.**

---

**No. 401**

---

**TONY GRANIERI, BANKRUPT,**  
**PETITIONER,**

**versus**

**TONY BLANCHE SCHRAMM, CREDITOR,**  
**RESPONDENT.**

---

## **RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.**

---

**TO THE HONORABLE THE SUPREME COURT OF THE  
UNITED STATES:**

### **I.**

#### **STATEMENT OF THE CASE AND THE QUESTION PRESENTED.**

The three-year moratorium on petitioner's purchase debt upon his farm expired in June of 1944. At the hearing on its re-valuation, he offered no evidence whatever—not

even his own testimony,—and through means of this appeal he is prolonging indefinitely his tenure of the farm.

Petitioner claims that the question presented, in short, is whether Section 75, Sub-section s(3), of the Bankruptcy Act, authorizes the revaluation of the farm by the original appraisal report of about two years before. This we dispute.

Petitioner fails to explain that such report was admitted in evidence in connection with the testimony of the expert witnesses who made it, towit, Reutzel and Rhode, (R. 38-41, 63-6, 73-8), and their testimony shows an increase in values during the interval of time of between 10% and 25%, (R. 33-4).

Petitioner fails to state that the Commissioner's order shows, in so many words, "that the value of said farm is fixed in accordance with the evidence submitted at said hearing, at the sum of \$29,950", (R. 3-4), and that the "other pertinent matters" besides "the evidence on value", mentioned in this order as having been heard, logically referred to matters concerning the right of respondent to a hearing (R. 72-3), or else pertain to the time to be allowed for redemption, (R. 79-80, 70-1).

Finally, he fails adequately to inform this Court as to the ample competent evidence supporting the Commissioner's finding on value, as approved by the District Judge and the Circuit Court of Appeals.

The record shows that four well-qualified San Antonio real estate men testified for respondent to values ranging from \$28,413 to \$33,500, for the farm, including its improvements, (S. F. 16-9, 33-4, 38, 42-6, 51-3, 63-6, 69-70).

In real substance, the question here presented is, when petitioner (farmer-debtor) offered no testimony whatsoever as to the value of his farm, and the respondent (sole creditor) offered substantial and competent testimony supporting the Commissioner's finding thereon, the District

Judge and the Circuit Court of Appeals both affirming, the judgments of all three Courts are "*clearly erroneous.*"

Such a question answers itself.

## II.

### THE OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit appears at pages 83-4 of the record, and its judgment of affirmance at page 84.

In addition, said opinion is reported in 149 F. (2d) 811.

The substance of the decision is found in this sentence, appearing therein:

"It cannot be said that the finding (on value) is without substantial and competent support in the record." (R. 84).

## III.

### ARGUMENT.

#### *The Evidence.*

The evidence reviewed by petitioner sustains the above quoted holding on the part of the Circuit Court of Appeals (Petition and Brief, 13-7). More specifically, it shows that the witness J. C. Rice gave a value of \$5,000.00 to the improvements, and a value of \$31,144.00 to the land and improvements together, (R. 36); that the witness Wm. F. Schutz gave a value of \$28,500.00 to the land, exclusive of the improvements. (R. 17-8).

It suffices to look to this clear admission found on page 12 of the petition and brief:

"The evidence would have supported a value finding ranging from \$20,912 to \$33,500.00." (\$28,500 plus \$5,000).

### *Petitioner's Authorities.*

Petitioner repeatedly says that the decision below is in conflict with *Carter vs. Kubler*, 320 U. S. 243, 64 S. Ct. 1; *Moser vs. Mortgage Guaranty Co.*, 123 F. (2d) 423 (C. C. A. 9th); and *Rhodes vs. Federal Land Bank*, 140 F. (2d) 612 (C. C. A. 8th).

In the *Carter case*, supra, it affirmatively appears from the Commissioner's order that "upon a personal investigation of said farm, I hereby fix the value of said farm." Nothing of the kind appears from the Commissioner's order in this case. (R. 3-4).

Similarly, in the *Moser case*, supra, it affirmatively appears from the Commissioner's order that he fixed the value of the farm "from personal knowledge of rent values in the vicinity."

In addition, it appears that the Commissioner combined the two methods of re-valuation, to-wit, a "re-appraisal" and a "hearing", for the purpose of fixing value. The case was reversed on account of these double departures from the statute "in a very material and prejudicial manner".

In the case at bar there was no such combination of two methods of re-valuation, but the sworn original appraisal report was admitted in evidence in connection with the testimony of the witnesses who made such report. There was no evidence outside of the hearing to influence the fixing of the value, and petitioner was accorded full opportunity to cross-examine the witnesses who made the appraisal report.

Again, in the *Rhodes case*, supra, the Commissioner's order affirmatively recites that the value was fixed after taking judicial cognizance of the files, including the appraisal report.

In the case at bar, nothing of the kind appears, and, while the original appraisal report gave the land a value of \$25,800, (R. 75), with improvements, the value here fixed was \$29,950, and that value appears to have been based, instead, upon the evidence of Schutz and Rice, the two witnesses who did not make such report.

The *Rhodes* case is largely based upon *Rait vs. Federal Land Bank*, 135 F. (2d) 447, from the same Court. In that case it was expressly recognized that the only power had by an appellate court in such matters was to test whether the result reached by the district judge was *clearly erroneous*, citing Rule 52(a).

*Admission of Report not "Clearly Erroneous".*

In *Equitable Life Assurance Society vs. Deutshle*, 132 F. (2d) 525, (C. C. A. 8th), it was said:

"It is settled by numerous authorities that when the findings of a referee in bankruptcy are supported by substantial evidence, they are not 'clearly erroneous' within the meaning of General Order 47, 11 U. S. C. A., and they will not be disturbed upon appeal. This is especially true here, as in this case the order appealed from has been approved and confirmed by the District Court."

See also *Equitable Life Assurance Society vs. Carmody*, 131 F. (2d) 318, (C. C. A. 8th).

It has been repeatedly held that an appraiser's report may properly be introduced in evidence as bearing on value, even in the absence of any testimony from the appraisers. *Brockton Savings Bank vs. Shapiro*, 42 N. E. (2d) 828 (Mass.); *Silberman vs. Monroe*, 62 N. W. 555 (Mich.); *Town of Ripton vs. Town of Brandon*, 67 Atl. 541 (Vt.).

The remoteness in time of evidence on value and the qualifications of a witness on value are matters largely

within the discretion of the trial judge, usually going "to the weight of the evidence rather than to its admissibility." *Love vs. United States*, 141 F. (2d) 981, (C. C. A. 8th); *United States vs. Beckett Co.*, 129 F. (2d) 473, 479, (C. C. A. 8th); *Oakland Waterfront Co. vs. Leroy*, 282 F. 385, (C. C. A. 9th); *United States vs. Savannah Shipyards*, 139 F. (2d) 953, 956, 140 F. (2d) 863, 864, (C. C. A. 5th).

Always we come back to the point, in considering the value found by the Commissioner: Why, if it was too high, did not petitioner take the opportunity afforded him to prove that fact?

The answer to this question is found in the clear inference that must be drawn from petitioner's failure to offer any evidence whatsoever—that he could not successfully have combatted the evidence offered by respondent.

Apparently petitioner was not interested in helping the Court to a just decision. His plan instead seems to be to take advantage of the Frazier-Lemke Law, by prolonging indefinitely his tenure of the farm after the expiration in June of 1944 of the three-year moratorium on his debt to respondent.

WHEREFORE, respondent prays that the petition for writ of certiorari be denied.

Respectfully submitted,

---

L. G. SEELIGSON,  
National Bank of Commerce Building,  
San Antonio 5, Texas,  
*Attorney for Respondent,*  
*Tony Blanche Schramm.*

*Of Counsel:*

TRUEHEART, McMILLAN & RUSSELL,  
713 National Bank of Commerce Bldg.,  
San Antonio 5, Texas.

2471319

2471319